



What in the World Is Flipping?

by Ted Boyer,
Division Director

At a recent meeting of the Association of Appraiser Regulatory Officials, Jerry R. Jolly, Acting Director of the California Office of Real Estate Appraisers, John S. Brennen, Chief of Licensing and Enforcement for California and Larry Disney, Chief Investigator for the Kentucky Real Estate Appraisers Board presented an excellent and informative program on flipping.

A flip was defined as "A fraudulent real estate transaction, where a property is bought, then sold again at a greatly exaggerated price." Additional definitions are: "In flipping schemes, properties are quickly bought and sold and the value of the property is artificially inflated through the use of improper appraisals. Flipping schemes are characterized by non-arms length transactions between business partners." (Star Tribune, Minneapolis, Mn.); "The flipping scheme involves legitimate initial purchases of (property), followed quickly by non-arms' length sales at inflated values to related or affiliated parties associated with the initial purchase." (The Commercial Appeal, Memphis, Tn.)

To illustrate their point, the presenters used actual sales histories of flipped properties. One sales history looked like this:

07/19/96: REO purchase	\$262,000
10/21/97: List price	\$385,000
01/22/98: Amended list price	\$375,000
05/02/98: Purchase contract	\$370,000
07/27/98: Closed escrow	\$370,000
08/18/98: List price	\$625,000
08/31/98: Purchase contract	\$622,000

09/04/98: Appraisal	\$622,000
12/03/98: Closed escrow	\$622,000
12/03/98: Trust deed	\$495,000

You might ask, "How can they do this?" Actually, a number of techniques are used, each of which involves a fraudulent appraisal. Typically, a straw buyer poses as the real buyer, preferably someone with good credit. After the final flip, the straw buyer is either paid a flat fee or shares in the excess proceeds of the purchase money mortgage. Occasionally, the straw buyer pretends to be someone else after stealing that person's identity. Sometimes the flip is an "inside job" with the escrow, title, or mortgage company manipulating the transaction. Frequently, the subject property is located in an area of moderately priced homes with pockets of higher priced homes, facilitating the availability of higher comparable sales information near the subject.

The common thread in all of these techniques is the involvement of an appraiser. Sometimes the appraiser is complicit. On occasion, a forged appraisal is used. Sometimes an innocent appraiser is duped into partici-

continued on page 2

In this Issue:

* Report on 2000 Legislation	page 2
* Protect From Mechanic's Liens	page 4
* REPC Receipt Section	page 5
* Trust Account Seminar on Video	page 5
* Disciplinary Sanctions	pages 6, 9
* Mortgage Brokers Registration	page 10
* HUD's Predatory Lending Defense	page 10
* Website Advertising	page 11

What Is Flipping?

continued from page 1

pating in the fraud. For example, the appraiser may lack geographic competency. Or, the client may offer an exorbitant fee for a rush job for which the client furnishes comparable sales information to support the pushed value conclusion. Sometimes the appraiser is motivated by the promise of future work to look for comparable sales information that supports the value sought rather than the actual value of the property.

The purpose of this article is not to teach people how to participate in fraudulent flipping, but rather, to make you aware of the problems and temptations in the market place and to help you recognize a problem when you see it. If you are suspicious about a transaction, ask yourself the following questions:

- Is the sales price significantly higher than the list price?
- Is the appraised value in line with recent comparable sales in the neighborhood?
- Has the home sold recently for a significantly lower price?
- Is the subject home located in an area of moderately priced homes with pockets of higher priced homes and overvalued?
- Is the home being transferred among related or affiliated parties?
- Has the property traded several times within a short period of time?

It is still perfectly legal to buy a property at a good price and resell it at a profit. It is only when elements of fraud enter the picture that people get in trouble and cause trouble for others. -

Utah Wins Education Award

Utah has received an education award for the course, "Personal Safety for the Real Estate Professional and Property Protection for the Real Estate Client," which was developed by the Utah Division of Real Estate and the Utah Attorney Generals office in response to several heinous assaults which had been made on some Utah real estate licensees.



The award was granted at the annual conference of the Real Estate Educators Association. The award is for the "Most Outstanding Real Estate Education Program" for the year 1999-2000. Candidates for the award come from all over the United States, Canada and Australia.

In conjunction with the safety course, the Division of Real Estate and the Division of Consumer Protection have developed a brochure for licensees to give to sellers to assist them in keeping their homes, valuables, and families safe and secure while their homes are on the market. Those brochures will soon be available for purchase at the local boards of Realtors. Non-Realtor members are authorized to purchase the brochures from the local boards as well.

Report on the 2000 Legislative Session

The following information is taken from a report made by the Utah Association of REALTORS Government Affairs Committee.

H.B. 45 - Telephone Solicitation Regulation

Defeated. This bill would have prohibited all individuals, businesses, charities, and non-profits from making business-oriented telephone calls without first checking an extensive no-call list. The list was to be updated monthly and would have been sold to the public through an annual subscription fee. It was estimated that roughly 60,000 phone numbers would be on the no-call list. This new law would have applied to real estate licensees when calling FSBs, expired listings, referrals, etc.

H.B. 107 - Utah Residential Mortgage Practices Act

Passed. This bill creates a mortgage industry regulatory commission and delineates prohibited mortgage practices. The intent of the new law is to prevent loan fraud and to provide limited oversight of loan officers. The regulatory commission will be housed within the Division of Real Estate. The new law will also provide protection for appraisers and real estate

residential building permits. This new fee was not necessary because the fund is already over-funded. Further, this fund is being misused by a few major beneficiaries in the state and is therefore, not helping homeowners and subcontractors as intended.

S.B. 215 - Real Estate Recording Law Amendments

Passed. This new law requires an affidavit to be recorded when terminating certain interests in real estate. The new law will aid in reducing the number of disputes over when, and if, interests in real estate have been terminated.

Passed. This bill provides for the extension of tax credits to benefit low-income housing.

Passed. This bill requires notice to condominium occupants prior to entry by management.

Passed. This bill clarifies provisions relating to the subdividing of land.

Passed. This bill allows condominium managers to make substantive changes based on a 67% vote of the condominium owners. The old law required a unanimous vote and was unworkable for property managers. The new law also clarifies insurance coverage responsibilities and defines “common areas.”

Defeated. This proposal would have permitted the doubling of property taxes by increasing the minimum basic school tax levy from the current rate of .001840 to .0030. This bill also would have removed the levy from the Truth-in-taxation requirements resulting in an automatic annual tax increase as property values increase due to reappraisal

Passed. This bill modifies the process citizens use to challenge the validity of an impact fee. The old law required all challenges to be brought within 30 days of the assessment. The new law expands the time for procedural challenges to six-months, and for substantive challenges to one-year. Citizens and developers will now have a meaningful opportunity to challenge cities.

Passed. This bill amends the qualification requirements for assessment as agricultural land when eminent domain proceedings are involved.

Defeated. This bill would have added the assessment of an additional fee on



Purpose: To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

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Do Your Efforts To Protect Clients From Mechanics' Liens Fall Short?

by Tony Patterson,
Assistant Attorney General

As practitioners have experienced, it is common in transactions involving new homes to include terms requiring the seller to complete specified improvements such as painting or floor cover replacement. Dutiful licensees will attempt to protect their client from mechanics' liens by having the improvements paid for at the time of closing from the sale proceeds.

However, this attempt could prove to be inadequate and expose the licensee to civil liability and disciplinary action if a contractor fails to pay the laborers or material suppliers; thus entitling the unpaid parties to file mechanics' liens. An updated title report at closing may not reflect the lien because the liens may be filed up to 90 days after the improvements were completed. Utah Code Ann. § 38-1-7. Therefore, valid liens could be filed long after the closing was held and you may

only learn of the problem when your client is requested to pay a lien.

A practitioner is concerned with potential civil liability that could arise in these circumstances because of long standing case law. Agents are sometimes held liable for negligent preparation of real estate contracts. *Mattielligh v. Poe*, 356 P.2d 328 (Wash 1960), *Wisnieski v. Harms*, 188 Neb. 721, 199 N.W.2d 405 (1972). Brokers are bound by a duty of reasonable care and diligence. *Smith v. Fidelity & Columbia Trust Co.*, 227 Ky. 120, 12 W.W.2d 276 (1928). Innocent or negligent misrepresentation of clear and free title by an agent may expose their broker to liability. *Stone v. Lawyers Title Ins. Corp.*, 554 S.W.2d 183 (Tex. 1977).

Perhaps more important is the possibility of a disciplinary action for breaching the fiduciary duty owed to clients under Utah Code Ann. § 61-2-11(16) and for incompetency under Utah Code Ann. § 61-2-11(8).

The risk of mechanics' liens can be avoided by following four requirements based upon the Utah Residence Lien Restriction and Lien Recovery Act. Utah Code Ann. § 31-11-1 et. seq. Homeowners meeting those requirements are protected from liens while lien holders may be entitled to compensation from a fund that is supported

by licensed contractors.

If homeowners have not complied with the requirements, the liens remain valid and the owners may be subject to liability for failing to obtain a bond under U.C.A. § 14-2-2.

To qualify for the lien protection, the titled homeowner must enter into a written contract for the repair or remodel of a residence. Second, the contract must be with a licensed contractor or a person exempt from licensure. Third, the home owner must pay the contract in full so it remains imperative to require payment at the time of closing. And fourth, the owner or subsequent owner must occupy the residence within 180 days from the completion of the work.

In addition to assuring compliance with these requirements, it is prudent to maintain adequate documentation because the client may be named in a law suit or asked to sign an affidavit verifying their compliance.

Additional information can be obtained by reviewing the Act and corresponding Rules found in Rule R156-38, reading two pamphlets available at DOPL, by calling the program at (801) 530-6104, or by visiting www.comerce.state.ut.us/dopl/lien.htm.



"Have you ever noticed
that life consists
mostly of interruptions,
with occasional spells of
rush work in between?"

-Buwei Yang Chao
Autobiography of a Chinese
Woman

REPC - Receipt Section

The new change to the Real Estate Purchase contract is relatively small, but is of major importance. The change is located directly beneath the "Received by" signature line on the Earnest Money Receipt portion of the REPC. For purposes of emphasis, it is highlighted below in bold with a double asterisk.

Received by: _____ on _____ (Date)
****(Signature of agent/broker acknowledges receipt of Earnest Money)**

Brokerage: _____ Phone Number _____

The Utah Real Estate Commission wants to emphasize that *signing the receipt section* on the Real Estate Purchase Contract means that the agent *has actually received* the Earnest Money Deposit; and *not signing the receipt* means that the agent *has not received* the Earnest Money Deposit.

As an illustration - the receipt portion of the REPC has been filled in by the selling agent showing a \$500 Earnest Money Deposit. At the time the selling agent presents the offer, the selling agent has not received the \$500 - so the agent doesn't sign the receipt. The buyer has assured the selling agent that the \$500 will be delivered or wire-transferred to the brokerage within twenty-four hours after the seller's acceptance of the buyer's offer.

As per this illustration, the Commission was concerned that the seller, looking at the offer, may not pay attention to the fact, or even understand that the receipt has not been signed and there is, at present, no \$500 Earnest Money Deposit. In other words, the seller looks at the REPC, sees the \$500 amount filled in, and mistakenly thinks that there is a \$500 Earnest Money Deposit.

The Commission felt that by adding the language highlighted above, the parties to the transaction will pay closer attention to the importance of the signature on the receipt. As a footnote, it is not generally a recommended practice to present offers without prior receipt of the Earnest Money Deposit.

Trust Account Seminar Now on Video

The Division of Real Estate has recently completed a video tape of the its Trust Account Seminar. This seminar is traditionally taught as a live class, the first Friday of every month, at the Salt Lake Board of Realtors office. It will soon be available at the regular outlets where you are currently able to see the annual Core Course; such as: your local boards of Realtors, the real estate schools and some of their branches, and other entities who are certified to provide the Core Course. You may receive three hours of continuing education credit for viewing this course. *For brokers only: this course may satisfy your core course requirement.*

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Russell V. Anderson	Logan
Jared Alan Campbell	Sandy
Randy Munns	Roy
Keith A. Peterson	Salt Lake City
Jerald A. Richardson	St. George
Lynn J. Sharp	Duchesne

Real Estate Disciplinary Sanctions



BRODIE, MIKE J., Sales Agent, Midvale. Consented to pay a \$200.00 fine and complete a course in the real estate administrative rules, based on posting a sign in the window of a dry cleaning shop which offered that he would give \$500.00 worth of dry cleaning in exchange for referral of a prospect who either purchased or sold a home through him. The sign also did not contain the name of the brokerage with which he was licensed. #RE99-09-39.

BROSIG, ALIX L., Sales Agent, Murray. License renewed on probationary status, but suspended for four months beginning May 20, 2000, based on failing to disclose a misdemeanor Mischivous Conduct conviction on his original 1996 application for a license, and the fact that he had additional misdemeanor convictions during his last renewal cycle. Mr. Brosig did report the recent convictions on his most recent application for renewal although he did not report them within ten days as required.

BROWN, SUSAN B., Sales Agent, Salt Lake City. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that she had failed to disclose past criminal history. After a post-revocation hearing, the Commission and the Director concluded that Ms. Brown had no intention to deceive on her application. On December 15, 1999, she was approved for reinstatement of her license on probationary status. #REFP99-19.

BUEHNER, PAUL W., Sales Agent, Salt Lake City. Application for renewal denied based on: 1) violating his license probation by engaging in behavior which led to a November, 1999 conviction for Possession of Drug Paraphernalia; 2) failing to submit documents to transfer his license to a new brokerage although he acted as an agent for that brokerage; and 3) failing to disclose a 1991 Marijuana Possession conviction on his original application for a sales agent license.

BULLARD COREY, Sales Agent, Syracuse. Conditional license revoked on February 24, 2000 after the criminal background check required of new sales agents revealed a domestic violence case which had not been disclosed to the Division. After a post-revocation hearing, the Commission and the Director concluded that Mr. Bullard had not realized the domestic violence case had resulted in a conviction and that he therefore did not intend to deceive the Division when he submitted his application. His license was reinstated effective April 20, 2000. #REFP20-03.

BYBEE, MICHELLE, Sales Agent, Salt Lake City. Application for renewal of her sales agent license granted on probationary status on

the condition that she will be required to submit written acknowledgement from any principal broker with whom she licenses during the current licensing period that she has informed the broker about her misdemeanor Retail Theft conviction.

COATS, PETER M., formerly principal broker, Coats Realty, Riverton. This publication previously reported that Mr. Coats' application for renewal as a broker was denied by the Utah Real Estate Commission and a sales agent license on probationary status issued in its place. The Commission's order was stayed pending the outcome of agency review. In an order dated January 20, 2000, the Executive Director of the Department of Commerce upheld the Real Estate Commission's denial of Mr. Coats' application for renewal as a broker, and he was issued a sales agent license on that date. Mr. Coats has appealed to Third District Court.

CRAWFORD, CHRISTOPHER W., Sales Agent, Salt Lake City. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. #REFP99-17.

DAY, JEFF, Sales Agent, Layton. Application for sales agent license granted on probationary status on the condition that he will be required to submit written acknowledgement from any principal broker with whom he licenses during his initial licensing period that he has informed the broker about his past misdemeanor.

DIFRANCESCO, DARREN K., Sales Agent, Draper. Renewal approved on probationary status on the condition that he will be required to submit written acknowledgement from any principal broker with whom he licenses during the current licensing period that he has informed the broker about his plea in abeyance to Disorderly Conduct.

DILLIN, LUCINDA, Sales Agent, Layton. Conditional license revoked on November 22, 1999 after the criminal background check required of new sales agents revealed that she had failed to disclose past criminal history. #REFP99-25.

EVANS, WILLIAM A., Sales Agent, West Valley. Consented to surrender his license effective June 16, 2000, based on entering a guilty plea in United States District Court to violation of 42 U.S.C. §1760(g), Embezzlement or Misapplication from a Child Nutrition Program. #RE20-05-18.

FARD, AFSHIN, Sales Agent, South Jordan. Conditional license revoked on March 13, 2000 after the criminal background check required of new sales agents revealed that he had failed to disclose a felony Unlawful Use of a Financial Card conviction, (which was subsequently reduced to a misdemeanor), a guilty plea to misdemeanor Theft, and the fact that there was an unpaid \$70.00 fine balance which had become a judgment in another criminal case. #REFP20-05. After a post-revocation hearing, Mr. Fard's request that his license be reinstated was denied. Mr. Fard has

requested Agency Review by the Executive Director of the Department of Commerce.

GEREK, GENE, Sales Agent, Salt Lake City. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. After a post-revocation hearing, the Commission and the Director concluded that Mr. Gerek had no intention to deceive on his application. On December 15, 1999, he was approved for reinstatement of his license on probationary status. #REFP99-18.

HASLEM, SAM V., Associate Broker, RE/MAX First Realty, St. George. Consented to pay a \$350.00 fine based on using a Real Estate Purchase Contract on a home to be built instead of using the construction contract, and on failing to obtain informed, written consent to limited agency. In mitigation, these technical errors did not cause the failure of the transaction or the subsequent dispute between buyer and seller. #RE99-11-01.

MARKOSIAN, JAMIE A., Sales Agent, Salt Lake City. Conditional license revoked on August 18, 1999 after the criminal background check required of new sales agents revealed that she had failed to disclose past criminal history. After a post-revocation hearing, the Commission and the Director concluded that Ms Markosian had no intention to deceive on her application. Her license was reinstated October 13, 1999. #REFP99-14.

NORMAN, BILL, Sales Agent, Salt Lake City. Conditional license revoked on September 1, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. After a post-revocation hearing, the Commission and the Director concluded that Mr. Norman had no intention to deceive on his application. His license was reinstated October 13, 1999. #REFP99-15.

PAYNE, TED DEE, and PAYNE, ROSALIE, Sales Agents, Sandy. Consented to each pay a \$350.00 fine and complete a course in the administrative rules related to licensee conduct, based on violation of Rule R162-6.1.4, which requires a licensee completing a listing to make reasonable efforts to verify the accuracy and content of the listing. The Paynes used the seller's square footage figures without verifying the accuracy of that information. The Paynes maintain in mitigation that as long as their advertising contained a disclaimer such as, "Buyer to verify all information," they thought that they had put the buyer on notice that the buyer, not the agents, would be responsible to verify the information in the listing. #RE99-08-16 and RE20-02-07.

PICKELNER, JOEL, formerly principal broker, Interwest Realty Group, Salt Lake City. This publication previously reported that Mr. Pickelner's application for renewal was denied by the Utah Real Estate Commission. The Commission's order was stayed pending the outcome of agency review. In an order dated March 17,

2000, the Executive Director of the Department of Commerce upheld the Real Estate Commission's denial of Mr. Pickelner's application for renewal.

REAL ESTATE HQ, INC., New Orleans, LA. Permanent Restraining Order issued on April 19, 2000 restraining that company from listing, advertising, or otherwise offering Utah real estate for sale, and from referring prospective buyers of real estate who reside in Utah to any real estate broker or sales agent, until such time as Real Estate HQ becomes licensed in Utah as a brokerage and only Utah licensees perform all acts associated with the transactions or referrals. Third District Court, Salt Lake County, Case 000903098.

SCHIRBER, LU GALE, Sales Agent, Utah Mountain Real Estate, Inc., Midway. License revoked by default, effective April 19, 2000, based on withdrawing \$5,000.00 in earnest money on a pending transaction from the brokerage trust account and using the money to pay for various brokerage and personal expenses. #RE99-02-23.

SCOVEL, JOSEPH P., Sales Agent, Sandy. Conditional license revoked on November 9, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. After a post-revocation hearing, the Commission and the Director concluded that Mr. Scovel had no intention to deceive on his application. His license was reinstated on probationary status effective December 29, 1999. #REFP99-24.

STAUFFER, JOHN D., Principal Broker, Cedar City. Consented to pay a \$2,750.00 fine, have his license placed on probation for one year, and to complete courses in contract law and Utah law, based on receiving commission directly instead of through his principal broker, with whom he was having a dispute over commissions, and based on a transaction in which he returned a buyer's earnest money check and subsequently attempted to obtain the sellers' signature on an earnest money release form. #RE33-98-18 and RE98-01-12.

TER MEER, JAMES E., Sales Agent, Salt Lake City. Renewal approved on probationary status on the condition that he will be required to submit written acknowledgement from any principal broker with whom he licenses during the current licensing period that he has informed the broker about his misdemeanor Sex Solicitation conviction.

TORNOW, JARED A., Sales Agent, Orem. Application for sales agent license granted on probationary status on the condition that he will be required to submit written acknowledgement from any principal broker with whom he licenses during the current licensing period that he has informed the broker about his past Petty Theft conviction.

Disciplinary Sanctions

continued from page 7

WARDLEY, BERNIE LYNN, Sales Agent, Clearfield. Conditional license revoked on October 27, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. #REFP99-16.

WILSON, ARNOLD, Sales Agent, Sandy. License granted on probationary status on the conditions that he successfully complete a plea in abeyance agreement in a domestic violence case and that he submits written acknowledgement from any principal broker with whom he licenses during the current licensing period that he has informed the broker about his plea in abeyance.

WOLFGGRAMM, DEAN Z., Sales Agent, Bountiful. Conditional license revoked on May 18, 1999 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. #REFP99-11.

YOUNG, CINDY, Sales Agent, Salt Lake City. Application for broker license denied on April 20, 2000 based on recent convictions for Assault on a Police Officer and Driving without a Registration, and for failure to comply with her sentence in that case. If she chooses to apply to renew as a sales agent, she will be renewed as a sales agent on probationary status, with the license probation to continue until either her criminal convictions, which are currently on appeal, have been dismissed, or she has completed the court-ordered penalties in the case. Ms. Young has requested Agency Review by the Executive Director of the Department of Commerce of the denial of her application for a broker's license.

YOUNG, RODNEY E., Sales Agent, Vernal. Conditional license revoked on December 8, 1998 after the criminal background check required of new sales agents revealed that he had failed to disclose past criminal history. #REFP98-16.

TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law.
(Taught Live)

Location: 2970 East 3300 South, Salt Lake City

Dates: Aug. 4, Sept. 8, Oct. 13

Time: 9:00 am to 12:00 noon

Credit: 3 hours continuing education

You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

Division of Real Estate

PO Box 146711

Salt Lake City, UT 84114-6711

You will receive a phone call confirming your registration the week of the seminar.

Parting Shot

by Richard W. Moffatt

At the conclusion of my 5 year term as a Real Estate Commissioner, I would like to thank the Division Director and Staff for their support. I have appreciated working with three Directors. Ted Boyer combines knowledge and hard work with his unusual ability to serve both the public and practitioners.

I didn't realize how little I knew until I associated with so many talented real estate professionals. I thank the other commissioners for their level of expertise and friendship. I commend the vast majority of the licensees for professionalism and concern for public welfare. It has been my pleasure to serve.

Utah Real Estate Commissioners

The Division would like to take this opportunity to publicly thank Dick Moffatt and Max Thompson for their years of service on the Utah Real Estate Commission. Both served with intelligence and energy with a desire to protect the public and improve professionalism among real estate practitioners.

Serving on the Commission is truly a labor of love. Service is completely voluntary and commissioners are not remunerated for their service. Dick and Max generously gave of their time, meeting at least monthly in commission meetings and each spent additional time outside of commission meetings. We and you are fortunate to have people of this caliber and qualifications willing to take time out of their busy schedules to serve the public and their peers.

The Division would also like to welcome to the Commission Tom Morgan of Salt Lake City and Danny Holt of St. George. These two gentlemen bring years of experience and public service to the Commission. Governor Michael O. Leavitt has said, "The strength of our government is found, to a large extent, in the willingness of our citizens to contribute their time and talents through service on state boards and task forces."

Appraiser Disciplinary Sanctions



BROCKBANK, JAMES L., Certified General Appraiser, Price. Consented to pay a \$1,000.00 fine and have his certification placed on probation for one year beginning April 11, 2000, based on authorizing a registered appraiser to sign his name on an appraisal report. Brockbank maintains that he terminated the relationship with the registered appraiser when he learned that the registered appraiser had signed Brockbank's name to an appraisal report about which he had not been informed. Brockbank agreed that he will never again allow another to sign his signature on an appraisal report, and that his certification will be revoked if he fails to honor this promise. #AP99-09-23 and AP99-09-25.

DAHLIN, CHRISTOPHER A., State-Certified Residential Appraiser, Cedar City. Consented to pay a \$500.00 fine based on erroneously including in the gross living area of a home the square footage of an unheated workroom, and by failing to disclose in the report that he had assisted in the preparation of the report. In mitigation, when he prepared the report, he was a registered appraiser, and he has since completed additional education and the examination and become certified. In further mitigation, the error in square footage did not have a significant effect on the valuation of the home. #AP99-11-16.

DALTON, TROY W., State-Registered Appraiser, Midvale. Surrendered his registration, effective June 13, 2000, in lieu of continuing to respond to the Division's investigation of complaints filed against him in Cases AP98-01-14, AP98-04-03, AP98-05-18, and AP20-05-04. Dalton agreed not to reapply for a new license for a minimum of two years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time.

EVANS, GARY A., Certified Residential Appraiser, Midvale. Agreed not to apply to renew his certification, effective May 9, 2000, in lieu of continuing to respond to the Division's investigation of Cases AP97-09-18, AP98-12-03, AP99-04-45, AP20-02-03, AP20-02-18, AP20-02-19, AP20-02-20, and AP20-03-03. Evans agreed not to apply for a new license or certification for a minimum of five years, and that he will not own or manage a company that appraises in Utah or work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time.

JOHNSON, GERALD L., State-Certified Residential Appraiser, Lindon. Consented to pay a \$1,000.00 fine, based on preparing a report in which he failed to make proper adjustments to comparables, failed to note the subject was much more expensive than homes in the immediate area, and failed to take land use regulations, economic demand, and likely neighborhood trends into account. In mitigation, the report was done in 1995 and the Division has not received any subsequent complaints against him. #AP97-01-14.

KUHLMANN, LAURIE, aka LAURIE ORTON, State-Certified Residential Appraiser, St. George. Consented to pay a \$2,000.00 fine in settlement of a case in which the Division alleged that in a 1997 appraisal report, she failed to employ recognized methods and techniques, failed to consider existing land use regulations, used dissimilar comps, and failed to collect adequate documentation to support the report. Ms. Kuhlmann maintained in mitigation that any violations were a result of her inexperience and that she had no intent to mislead. #AP98-02-03.

LUDLOW, STERLING S., State-Certified Residential Appraiser, Spanish Fork. Agreed to retire from the appraisal profession in lieu of continuing to respond to the Division's investigation of complaints filed against him in Cases AP97-11-09, AP99-11-15 and AP20-02-26 as well as two additional complaints which had not yet been assigned case numbers. Ludlow agreed not to reapply for a new license for a minimum of five years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time.

MERIWETHER, LAYNE T., Certified Residential Appraiser, Salt Lake City. Consented to pay a \$2,000.00 fine and have his certification placed on probation for one year beginning April 11, 2000, based on violating USPAP by failing to adequately supervise a registered appraiser. Meriwether maintains that the registered appraiser did not tell him that the subject property, on which the street address had changed, had sold approximately a year before for substantially less than the registered appraiser's appraisal of the property. He further maintains that he thought the registered appraiser's comparables were appropriate although they were not in the immediate neighborhood of the subject. #AP99-07-08.

THOMPSON, STEPHEN, State-Certified Residential Appraiser, formerly of Provo. Consented to pay a \$1,000.00 fine based on signing a report containing a substantial square footage error, failing to disclose that a registered appraiser assisted in or actually prepared the report, and on failing to respond to the Division's investigation of the matter in a timely fashion. #AP97-12-07.

WADLEY, MICHAEL, Registered Appraiser, Springville. Surren-

continued on page 10

Disciplinary Sanctions

continued from page 9

dered his registration, effective April 11, 2000, in lieu of continuing to respond to the Division's investigation of Case AP99-10-24. Wadley agreed not to reapply for a new license for a minimum of five years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity, for that same period of time.

WRIGHT, JOHN R., Registered Appraiser, Provo. Agreed that his appraiser registration would not be renewed, effective May 9, 2000, and that he would not apply for a new license or certification for a minimum of two years. He also agreed that he will not own or manage a company that appraises in Utah or work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time. Among other things, Wright admitted using dissimilar comparables when similar comparables were available, using incorrect information in his reports, including incorrect square footage, and indicating "construction" under sales price in a report and "refinance" in another report on the same property, although both references were inaccurate or misleading.

WRIGHT, SUSAN L., Registered Appraiser, St. George. Surrendered her registration, effective April 11, 2000, in lieu of continuing to respond to the Division's investigation of Case AP99-07-09. Wright agreed not to reapply for a new license for a minimum of five years, that she will not own or manage a company which appraises in Utah, and that she will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity, for that same period of time.

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Registration for Mortgage Brokers under the New Utah Residential Practices Act

The Division of Real Estate has received a number of inquiries asking which companies and/or individuals must register under the new Utah Residential Practices Act, and when that registration will be taking place.



The Act becomes effective on July 1, 2000. However, until the law becomes effective, the newly appointed Residential Mortgage Regulatory Commission cannot meet and begin to make the rules and develop the procedures for how and when to register.

As a result, registration will not be required for a period of 60 to 90 days after the effective date of the Act. Specific details on the procedures for registration will be publicized at a later date.

Mortgage brokers who are not currently registered with the Department of Financial Institutions are invited to call the Division of Real Estate at 530-6747 and get your name on the notification list so that we might contact you when the time comes for official registration.

HUD's Predatory Lending Defense

(WASHINGTON) HUD has announced new consumer protection initiatives to prevent families who receive FHA-insured mortgages from being victimized by predatory lending practices.

New protections include restructuring inflated mortgages, default counseling for FHA borrowers, denying FHA insurance to FHA homes that have been "flipped" at inflated prices, placing caps on the points and fees charged FHA borrowers, deploying special teams to pursue unscrupulous appraisers and lenders, removing appraisers involved with large numbers of foreclosures, and imposing tighter FHA down-payment rules.

HUD says the "explosive growth" in predatory lending has led to new schemes by which FHA homeowners are being defrauded. "Our new Fraud Protection Plan will help those already victimized and help rid the housing marketplace of these abusive and predatory practices," said a HUD spokesman.

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Is Someone Else Advertising on Your Website?

In recent years many individual licensees and firms have, with the assistance of technology professionals, created sites on the World-Wide Web. There are now a number of businesses whose sole or main service is creating websites for others.



Among the features which can be placed on a website are "button ads." These can allow consumers looking at a broker's site to "hot-link" to the sites of other businesses offering services buyers or sellers might need. The Commission has learned that it is possible for a website construction company to insert button ads on a site it created without the knowledge and consent of the owner. For example, a company which constructed websites for three brokers in a particular area might, in an effort to get a new account from a home inspection company, offer to place that company's button ads on the websites of the brokers. Such an offer of free, targeted advertising might be very appealing to the inspection company.

Aside from the obvious issues concerning unauthorized use of the broker's website, a perhaps bigger concern is that consumers viewing the broker's site may construe the presence of the button as an endorsement of the inspection company by the brokerage firm.

If a company, which was retained as a result of the appearance of its button ad on a broker's website, failed to perform an adequate inspection, which in turn caused the consumer to incur a financial loss, it is possible (and perhaps even probable in this era of rampant litigation) that the consumer would attempt to recover by suing the broker.

The point is, brokers and licensees should either take preventative measures or continuously check their websites to ensure that no one is riding their coattails without authorization. From this perspective, a website is similar to the display window of a broker's office. The only items viewable through such windows should be things which the broker or office manager have authorized to be there.

Reprinted with permission from the New Jersey Real Estate Commission Newsletter, Summer 1999.

remember

You Must Notify the Division

--in Writing--

Within 10 Days of: :

- a change of personal address;
- a change of business address;
- a change of name;
- a change of personal or business telephone number
- a conviction of a criminal offense
- a filing of a personal or brokerage bankruptcy

Moving to Another State?

The Division frequently gets calls from agents who are thinking about doing a transaction that involves another state. They want to know what the other state's views and laws are. Since we don't regulate and/or enforce another state's laws, we inform the agents that they should call the other state.

For those licensees who are needing information from any other state, we would encourage you to access www.ARELLO.org. That is the web site for the Association of Real Estate License Law Officials. From that site you will be able to obtain phone numbers and addresses of every state in the United States and every province of Canada.